

Commercial Lien Laws

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Background

In reaction to the problem of commercial brokers completing a commercial lease or sales transaction that is subject to a listing or commission agreement only to receive a portion of the agreed upon fee, or sometimes no fee at all, commercial brokers have sought the statutory right to place a lien on the property in question as a means to ensure the commission would be paid.

Issue Analysis

Many states have been exploring, or have already enacted, a commercial real estate broker's commission lien law. These laws allow for a commercial broker to obtain and foreclose upon a lien as a legal remedy against a property if the buyer/seller or lessee/lessor fails to pay the broker the agreed upon commission, as their interests in the real property may apply. Litigation to recover fees often consumes the entire fee the broker earned and would have been paid, and is not always swift, to the detriment of the real estate brokerages and commissioned agents involved in the transaction. These laws have been enacted to solve the problem of brokers going into a closing of a sale, and without mutual consent, receiving a fee lower than previously agreed, upon, or in some cases, no fee at all.

The exact definition of commercial real estate varies from state to state. Although most states recognize commercial real estate as property used for agricultural purposes, and property on which buildings or structures are located, the unit definition varies. Some states recognize commercial property as structures larger than four residential units, while some recognize structures containing eight or more units. Condominiums, townhouses and homes comprising a subdivision are not included in this definition.

Although the language in each law varies from state to state, most laws state that the lien language must be placed in the written agreement signed by both the party the broker represents, and the real estate brokerage agency. This agreement is only valid with the principal broker, thus those working under the broker have no authority to place a lien. The CCIM Institute knows of twenty-one states, to date, that have adopted commercial lien laws. These states are Alabama, Arizona, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Missouri, Nevada, New Hampshire, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, and Wisconsin.

The enactment of commercial lien laws serve as a safety net for brokers who previously had no means of insuring payment of the agreed upon fee, other than costly legal battles. Of special interest to commercial brokers is the need for the lien laws to be as forceful and efficient for the commercial lease transactions as for commercial real estate sales. As more and more states contemplate creation of such laws, commercial brokers will have a greater sense of security when completing a transaction.

Because these laws vary from state to state, brokers should check with their legal counsel regarding specific provisions of law in the state in which they are doing business.

Sources for more information on Commercial Lien Laws

CCIM Institute Statement of Policy

http://www.ccim.com/members/govaffairs/pdf/master_SOP_4_04.pdf
REALTORS® Library Field Guide to Commercial Broker Lien Law
<http://www.realtor.org/libweb.nsf/pages/fg710>